

North Carolina Wireless 911 Board
MINUTES
July 20, 2007

Guest

Valerie Carter (ITS)

Tara Edwards (Cherry, Bekaert & Holland)

Matthew Hinckle (Intrado)

George Iritz (Northrup Grumman IT)

David Jones (L. Robert Kimball)

Wesley Reid (Guilford Metro 911)

Lisa Rower (Cherry, Bekaert & Holland)

Carey Spence (Intrado)

Eugene Vardaman (CC&PS/CJIN)

Staff Absent

Chair's Welcoming Remarks:

Ethics Awareness/Conflict of Interest Statement:

Approval of minutes

Chairman Stoneman asked if anyone wished to make changes or additions to the minutes of the May 18, 2007 Wireless Board meeting. Wayne Bowers moved the minutes be approved as submitted, Christi Derreberry seconded, and the motion carried.

Presentation of 2005-2006 Audit, Cherry, Bekaert, & Holland, LLP

Richard Taylor introduced Lisa Rower and Tara Edwards from Cherry, Bekaert, & Holland, LLP, and asked Lisa to address the Board. Lisa was the Senior Accountant assigned to the audit this year, and Tara was the Audit Manager. Lisa added that Eddie Burke, the Partner in Charge, could not attend today.

Lisa reported that they had completed their audit in November, 2006, and had issued an unqualified team opinion stating that the financial statements, in all material respects, were in conformity with generally accepted accounting principles of the United States, and there were no issues with the report. She noted that this year's report contained a management discussion and analysis that had not been done in prior years. It is not a required part of the basic financial statements, but a general overview of changes and "goings on" within the fund this year.

Lisa noted that there was a slight increase in accounts payable this year due to the TracFone settlement. Overall the change in revenues over expenses was \$9.6 million, resulting in a final fund balance of \$17 million. She pointed out that this was also the first year for the new statutory distributions, where the percentage allocations to CMRS providers and PSAPs went from 60/40 to 53/47.

Noting it wasn't in the printed report circulated to Board members, Lisa mentioned that they had issued a Management Letter which was a discussion with management about things that could possibly be improved in the fund, and also issues that may need to be addressed in the upcoming audit. She also pointed out that auditing standards will be changing for FY 2007. One change will be in the audit documentation. Previously they were able to issue a report when their field work was completed, typically in November. But going forward they will have to wait; when they issue the report will have to be closer to when they give the report. Also, accounting boards are becoming a little more stringent about communication of internal control matters. This has not historically been an issue for the Wireless Fund, but where verbal communications about internal control matters between the auditors and Board management used to be acceptable, such communications will now have to be documented in writing.

Referring back to the distinction between a November field work report date and a later formal report date, Chairman Stoneman asked what the latter date was. Tara Edwards said that due to some additional information they had to finalize after the field work was complete, the formal report had been issued in June. She speculated that in the future the difference shouldn't be so great.

Wayne Bowers asked if Cherry, Bekaert, & Holland will be performing the audit this year, and Lisa said that last year was the final year of their three year contract, but that

they have put in a proposal for another, and hope to be selected to continue going forward.

Chairman Stoneman asked for further questions, and hearing none, thanked Lisa and Tara for their report, and they thanked the Board for the opportunity to present it.

Update on Comprehensive Statewide Wireless 911 RFP

Christi Derreberry made a motion to move into closed session to discuss the Comprehensive Statewide Wireless 911 RFP pursuant to NCGS 143-318.11(a)(1). Wayne Bowers seconded the motion, which carried, and Chairman Stoneman asked attendees who were not Board members or Board staff members to leave the room until notified to return. The Board meeting went into closed session at 10:11 AM. At 10:37, pursuant to a motion made by Christi Derreberry to return to open session, seconded by Slayton Stewart and which carried unanimously, the meeting returned to open session.

Upon resumption of open session, Richard Taylor stated that the staff recommendation regarding the RFP is to authorize staff to finalize the procurement process to secure a contract to proceed with the RFP for the Comprehensive Statewide Wireless 911 Plan. Chief Cherry made a motion to accept that recommendation, Anand Gandhi seconded, and the motion carried.

Legislative Update

Richard Taylor said that there has been a flurry of activity regarding legislation, "to put it mildly". He said that staff learned about the most recent changes to H1755 on Tuesday, and that it was going before committee for a vote on Wednesday. He observed that there were some very significant changes in the Senate Finance Committee Substitute from the earlier versions of H1755, let alone from the current 62A. He added that when the Committee Substitute went to vote, it was passed unanimously in committee with no discussion at all. He stressed that he wants the Board to be aware of the changes, since the bill will be going to the House for concurrence and is likely to pass in its current state.

Many definitions were changed in the Committee Substitute. One that caused Richard alarm was the definition of Enhanced 911. The terms "ANI" and "ALI" were absent altogether, and there was no mention of the delivery of the telephone number. The definition as written was reduced to having the call selectively routed geographically, and nothing more. Richard was ultimately able to persuade them to include delivery of the telephone number in the definition.

A significant change affecting this Board will be its expansion to seventeen members. Richard reminded everyone of Wayne Bowers' observation at the last meeting that the proposed composition would favor the commercial side of the Board, with nine members representing the private sector and seven members representing the public sector. That disparity has not changed. NENA will get a second seat on the Board, appointed by the Governor. The Governor will also appoint an individual who represents a VoIP provider, and will continue to appoint one who represents NCLM and one who represents NCACC. The Speaker of the House, who used to appoint three individuals

representing CMRS providers, will now appoint only two, as well as one individual who is a sheriff, one who represents the NC chapter of APCO, and two who represent LECs, with one of them representing a LEC with less than 50,000 access lines. The President Pro Tem of the Senate will now appoint one individual who is a chief of police, two who represent CMRS providers, one who represents the NC chapter of NENA, and two who represent LECs, with one of them representing a LEC with less than 200,000 access lines. Richard speculated that the access line restrictions for the LEC appointments were geared toward insuring that small, medium, and large LECs were represented.

Subsequent to the last Board meeting, Richard did contact the stakeholders to voice the Board's concern about the nine member/seven member split, but was told that all the stakeholders except NCAPCO wanted it that way. NCAPCO did submit a letter and placed phone calls voicing its concern, but no changes were forthcoming. Chairman Stoneman observed that the potential exists for all four LEC representatives to represent LECs with fewer than 50,000 access lines, and Richard concurred.

Richard pointed out that the conference room the Board is using today is not capable of holding an expanded Board as well as staff and visitors. He has been investigating alternative venues, and has found one that is well suited to accommodating a larger assembly, but is problematic because of parking issues. That venue is the conference room in the Education Building downtown. Chairman Stoneman noted that other options may be available as well. Richard said no decision has been made, but he wanted Board members to be aware that the change will be necessary.

Concerning changes to Powers and Duties of the Board, Richard noted language changes regarding PSAP audits that now give the Board a duty "To *investigate* the revenues and expenditures associated with the operation of a PSAP to ensure compliance with restrictions on the use of amounts distributed from the 911 Fund", which makes it a little different than what we have been doing in the past. Richard Bradford speculated that in practice there is really no difference, but in substance there is the potential for significant difference in the sense of having professional auditors go in and audit the PSAPs. That has not been done in the past, but is certainly available under the current law and appears to be missing in the bill. Richard Taylor said that if this legislation passes, we will look into some of the processes that staff is involved with and possibly change how we do the annual PSAP revenue/expenditure reports. Dave Corn asked if there is a desire to audit less, and Richard Taylor replied yes, that he thought there was such a desire on the part of some of the PSAPs. Chairman Stoneman observed that at the end of the day, however, the Board still has that authority. Richard Taylor added that he doesn't see how we can avoid doing an audit given the new requirement that the Board *must* lower the fee if surplus revenues accrue.

Chairman Stoneman pointed out that the challenge to such a rate reduction is that the 53% - 47% ratio between the CMRS fund and the PSAP fund will be fixed. He asked if we're over-recovering in one of those funds, will we have to reduce the service charge even though we're not over-recovering in the other. Richard Bradford observed that's a good question, adding it was also one for which he didn't have an answer.

Moving to the topic of how funds will be distributed to the PSAPs, Richard Taylor mentioned that one potential problem has already arisen regarding distribution of the "base amount". That amount is supposed to be the amount the PSAP received during FY 2006-2007 as reported to the State Treasurer's Office, Local Government Division. This morning Richard learned that one of the municipalities which has been a Primary PSAP for Wireless 911 but depended upon the county for wireline revenue does not appear on the FY2005-2006 State Treasurer's 911 Fund report. Whatever the reason behind it, unless that PSAP shows up in the FY 2006-2007 report, that PSAP will not get a base payment under the new legislation. The only way they would receive any distribution would be if there was excess after all the base amount payment obligations had been met. Richard said he has been aware of some Finance Officers who have not been properly accounting for their 911 revenues, so they may well be facing the same dilemma.

Chairman Stoneman asked if this calculation of the base amount is indefinite, if through all the years ahead the base amount would remain what was distributed to the PSAP during the year ending June 30, 2007. Richard responded yes, and Chairman Stoneman asked how that made any sense. Richard said he expects that after a few years to determine how PSAPs are affected by the new distribution model and whether or not surplus funds are accruing, the subject will probably be revisited in the legislature. Chairman Stoneman asked how the Board is going to be able to cover that expense going forward with wireline revenue diminishing while charging only seventy cents. Richard said that the average wireline revenue amount across the state is approximately sixty-seven point eight cents per subscriber, so the seventy cent flat rate amount should cover it. He added that until the system is in place and PSAPs that have been spending their wireline money inappropriately have ceased doing that, we will have no sure way of knowing how the financials are going to work out. Richard conceded that this may not be the best way to proceed, but it is a way the stakeholders have agreed upon as a starting point, and we do, after all, have to start somewhere.

The second part of fund distribution will be per capita. This will be a distribution of funds available after the base amount payments and any contributions to the grant fund have been made. Richard said there is a common perception that with the additional fee collections from VoIP providers and the growth of wireless, there will be some funds available for such a distribution. The 911 Board must designate a percentage of these remaining funds to go to the grant fund, although it may elect to distribute all of the funds to the PSAPs on a per capita basis without contributing to the grant fund at all.

The biggest change in the use of the fund for PSAPs is the addition of some training expenses, including the cost of transportation and lodging. The training is supposed to be in-State training unless it is unavailable in-State or is less expensive if received out-of-State.

Richard Taylor noted that the Grant Account specifics have not changed from the earlier proposed legislation. Richard Bradford added as a point of general information that there are other statutes and administrative rules related to grants made by State agencies, and that we will be observing those in the agreements we make.

Continuing to review the document, Richard Taylor said things remain pretty much the same until Section 3. In previous versions of 1755, the Wireless Board would come to an end and everybody would be appointed to the new 911 Board effective January 1. That has now been changed to provide that eleven members of the current Wireless Board will transfer over to the new 911 Board. The State CIO or his designee will determine who among existing Board members will serve a four year term and who will serve a six year term beginning January 1. Richard Bradford noted that terms are still four years, but that the goal of this language is to establish staggered terms. Richard Taylor further noted that one CMRS Provider representative seat on the current Board will no longer exist in the new Board.

Referring to Section 7 and 8, Richard Taylor reminded everyone about the two bills TracFone had introduced that had not gone anywhere, and observed that this is where they made it into this bill. The Joint Legislative Utility Review Committee will be studying collection of prepaid wireless fees, and effective August 1, 2007, the wireless surcharge will not apply to prepaid wireless providers through calendar year 2008. Richard Bradford noted that the language means collections will be suspended during that period, and that if prepaid wireless providers do collect and remit fees during the suspension period we may have an issue.

Richard Taylor reminded everyone that when the TracFone issue originally surfaced staff circulated a survey among all providers asking them to identify whether or not they provided prepaid service. Many were either providing prepaid service or reselling to a prepaid service provider, and when asked why they had not reported that in the past, replied that they had not been asked. A new CMRS Provider Wireless Surcharge Remittance Form was created to incorporate that question and was posted to the website, but notifying providers of its availability apparently fell through the cracks with the transition between Leslie Tripp leaving staff and Marsha Tapler coming on board. As a result, providers have continued to use the old form, so we still don't know how much revenue is coming from prepaid. Marsha Tapler is contacting each of the providers asking them to use the new form, but in the meantime, we don't know what impact the loss of prepaid revenues will have. The suspension of the prepaid service charge payments will be for a sixteen or seventeen month period of time, depending upon what, if anything, happens to change it during the short session next year.

Wayne Bowers asked for clarification of Section 7.(b) and 7.(c), noting that he sees a beginning date for the moratorium, but not an ending date. Richard Bradford explained that payment of the service fee will no longer apply to prepaid wireless service under the current law (G.S. 62A-23) beginning August 1, 2007. When the new law takes effect on January 1, 2008, the same moratorium will apply to payment stipulated in that law (G.S. 62A-43) through calendar year 2008. Richard added that if the Board receives payment during that time, it will be a problem because the legislation prohibits it. He added that he believes it very likely that the moratorium will remain in effect through the end of calendar year 2008.

Christi Derreberry asked how likely it would be that we could get changes made to the legislation during next year's short session, and Richard Bradford replied that because of the various economic impacts of this legislation, any changes will remain speculative until we have good and reliable numbers. Chairman Stoneman suggested that the

Board should advise the bill sponsors that the potential loss of revenue is a huge unknown, and request that they respond to the Board quickly if it becomes a problem. Christi asked if the responsibility for this data collection will fall upon the Board to report back to the Joint Legislative Review Committee. Richard Taylor said that virtually every prepaid wireless provider is not happy with this legislation, and he believes that they will lobby the Joint Legislative Utility Review Committee to resolve the question quickly. He said that since the Revenue Department is now involved in this, he thinks there will be added pressure to find a solution and the topic will likely be a high priority during the short session.

Richard Bradford noted that it seems likely that providers will not be able to modify their collection and remittance models quickly enough to preclude some payments being sent to the Board after the August 1 deadline. Richard Taylor said that we need to immediately ask the providers to let us know if any of their remittances do include payments received after August 1 so that we may place them in an escrow fund or something like it to protect that money, as they will certainly be entitled to ask for it to be refunded to them.

Chairman Stoneman returned to the subject of the Board's inability to modify the distribution percentages allocated to CMRS providers and PSAPs in the new legislation. Richard Taylor reminded everyone that the 57%-43% split pertains only to wireless 911 collections, not wireline. Chairman Stoneman said that the issue he sees is that if we have to reduce the seventy cent service fee because we are over-recovering, the inability to balance those distribution percentages could have an adverse impact. For example, if the CMRS provider fund grows to the point that a reduction must take place, but the amount going to the PSAPs is just where it needs to be, the mandatory reduction will adversely impact the PSAPs. Richard Taylor replied that if that were the case we would have to go back to the legislature for some sort of accommodation.

Chairman Stoneman asked what would be the best approach for expressing the Board's concerns, noting that his understanding was that any request for change at this late date would jeopardize the bill. Richard Bradford concurred, since all indicators point toward this legislative session closing before the bill could go back to committee and be acted upon. Richard Taylor said there are many parts of the bill that concern him, but that he could work with all but one of them. That one concern is the inability to project what effect the loss of prepaid revenues will have upon the solvency of the fund. He said that his understanding is that prepaid business amounts to 5%-6% of total wireless company revenue. Since wireless service fee revenues have been averaging 6%-7% growth per year for the past several years, we should be okay, but without hard numbers we cannot be certain. His concern is that we have to meet the base line distribution of providing PSAPs with what they received in FY 2006-2007, and he just doesn't know if the lack of prepaid revenue will compromise that requirement. The good thing is that we will have from August through December to get a feel for what that impact will be before the new legislation goes into effect.

Chairman Stoneman said he was concerned from a Board credibility standpoint that we should show due diligence by bringing the problem to the attention of the legislature now, not bring it to them for the first time next April. Richard Taylor said he has voiced concern about it to several stakeholders, but has not made any "official" contact

because of the concern "in the halls" that such a statement at this time could derail the entire process. He observed that perhaps a personal visit with the bill's sponsors and other stakeholders to voice the Board's concern over the potential problems this loss of revenue might present would be less prone to misinterpretation than a written memo that might end up in the wrong hands and threaten the bill's passage. Chairman Stoneman agreed that we don't want to risk the bill's passage by advocating any change at this time, but such a meeting would put us in a better position to get relief next spring if necessary. With apparent consensus around the table, Richard Taylor offered a staff recommendation that the Board direct him to go to the bill sponsors along with other stakeholders to express our concern with sections 7.(b) and 7.(c). Wayne Bowers asked how we would reply if they asked what we expect them to do about it, and Richard said he would simply ask that they prioritize relief in the short session if we learn that this is, indeed, a problem. Dave Corn moved to accept the staff recommendation, Christi Derreberry seconded, and the motion carried.

Status Update on Proposed Rulemaking

Richard Bradford said we are waiting to see what happens with the legislation, that he has two versions of rules waiting to go forward based upon that outcome, and once he knows he will proceed with the appropriate version.

Update on Annual PSAP Audit

Marsha Tapler reported that we have received all 125 Revenue/Expenditure reports, 60 of them have been approved, 46 are still in process, and 19 PSAPs have still not responded to our initial clarification requests. She said she has sent second notices to them, which were supposed to be acknowledged by the beginning of July, but has yet to receive any responses. Richard Taylor said the second notices were sent by certified mail, return receipt requested, and that the next step will be to make personal contact with those PSAPs. If issues remain by the next meeting date, recommendations will be made to withhold funds.

Update on FCC Activity/Federal Legislation

Richard Taylor reported that initial responses to the Notice of Proposed Rule Making regarding location accuracy have come in with no surprises in the positions taken. He said the next step will be seeing what the FCC will decide based upon those responses. He added that while he was in DC he attended the introduction of House Resolution 537 by the co-chairs of the 911 Institute to name one month of the year as 911 Education Month. A month has not been specified, but everyone expects it will be April.

Approval of 2007-2008 Budget

Richard Taylor said that due to the probability that H1755 will pass he has simply modified this year's budget to reflect some increases that he expects will be necessary, such as increased revenues and annual salary increases provided by the State. He pointed out that if the new legislation passes a new budget will have to be created in January when the new Board is seated. Chief Cherry moved that the Board adopt the budget as presented, Wayne Bowers seconded, and the motion carried.

Field Reports/ Status of Phase I / Phase II Wireless 911 in North Carolina/ Administrative Reports

Chairman Stoneman reminded everyone present that these agenda items were posted on the web site for Board member review prior to this meeting as discussed at the last meeting. He asked if there were any questions about those reports. None were cited.

Adjourn

Chairman Stoneman asked if anyone had other business to bring before the Board. Wayne Bowers asked Richard Taylor about the Pitt County agenda item that had been on the initial agenda but removed before the meeting. Richard replied that Pitt County had asked for a waiver regarding orthophotography collection intervals, the review committee had discussed the request and come up with additional questions, but that conclusions had not yet been finalized. He felt final recommendations would be premature at this meeting, and said that this topic will return on the next meeting agenda.

Chairman Stoneman entertained a motion to adjourn. Wayne Bowers so moved, Chief Cherry seconded, and the motion carried.